

212

U. S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C.

In the Matter of:)	
)	
Route 110 Service Corp.)	SETTLEMENT AGREEMENT
)	
Respondent.)	AED/MSEB 4940
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Route 110 Service Corp. located at 616 Broadway, Amityville, N.Y. (Respondent).

Preliminary Statement

On August 19, 1999, a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80. The NOV stated that on July 3, 1998, reformulated gasoline (RFG) was sold or offered for sale that did not meet the requirements of RFG in that it failed to meet the VOC emissions performance reduction standard for Amityville, New York, a covered RFG area. The regular unleaded 87 octane gasoline had a VOC emissions performance reduction of -15.15% on July 3, 1998, which violates the applicable minimum standard of 13.1%. Respondent was liable for this violation as the retailer who owns, leases, operates,

controls or supervises the facility where the violation was found. The NOV further stated that the statutory civil penalty is Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day for each such violation plus the amount of economic benefit or savings resulting from the violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d). The proposed civil penalty for the violation alleged in the NOV was Three Thousand Three Hundred Dollars (\$3,300).

2. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

3. The parties agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter.

4. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement.

5. At all relevant times Respondent was the retailer of the Route 110 Service Corp. retail outlet located at 616 Broadway, Amityville, New York, within the meaning of 40 C.F.R. § 80.2 (k).

6. On July 3, 1998, an RFG survey inspection was conducted at the Route 110 Service Corp. branded gasoline retail outlet located at 616 Broadway, Amityville, New York. This inspection

alleged that regular unleaded 87 octane gasoline, having a VOC emissions performance reduction less than the allowable minimum standard was being sold or offered for sale at the time of the inspection. The regular unleaded 97 octane gasoline's VOC emissions performance reduction was 28.25% less than the allowable minimum of 13.1% for VOC Region 2. This constitutes a violation of 40 C.F.R. § 80.78(a)(1).

c. EPA further alleged that Respondent was liable for the violation pursuant to 40 C.F.R. § 80.28, as the retailer.

d. Respondent has corrected the violation.

e. Jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

f. Respondent agrees to pay Three Thousand Three Hundred Dollars (\$3,300) within thirty days of receipt of a signed settlement agreement from EPA. In the event Respondent or his attorney, Hopkins, Kopilow & Weil, Esqs., (attorney) does not receive a copy of this Agreement within thirty (30) days following its execution by EPA, the due date shall be thirty (30) days following the date of Respondent's or his attorney's receipt of an executed copy. Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay this amount by cashier's check, certified check, or attorney's escrow check, with the notation

"AED/MSEB - 4940" payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 4940

A photocopy of the check shall be mailed simultaneously to:

Jacqueline Robes Werner, Esquire
U.S. Environmental Protection Agency
Air Enforcement Division (2242A)
401 M Street, SW.
Washington, D.C. 20460
Attn: AED/MSEB 4940

Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 5 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by Respondent, the parties agree that upon such default of failure to comply, EPA may commence an action to enforce this Agreement or to recover the statutory civil penalty of Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day for each such violation, plus the amount of economic benefit or savings resulting from the violation alleged in the NOV, pursuant to § 211(d) of the Clean Air Act; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of § 211 of the Act, and Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of

the passage of time.

7. This Agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent.

8. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution intended and is sufficient to bind Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.

9. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters consented to herein. Notwithstanding its agreement to settle or resolve this matter, Respondent neither admits or denies the findings of fact or conclusions or law contained herein.

10. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

11. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

12. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of § 203 of the Clean Air Act, 42 U.S.C. § 7522, which

are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

Route 110 Service Corp.

by: Michael Glazer
Michael Glazer, President
Route 110 Service Corp.

Date: Nov 18, 1999

United States
Environmental Protection Agency

by: Richard Buckheit
Bruce C. Buckheit
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: 12-9-99